

Washington Health Law Manual – Fourth Edition
Washington State Society of Health Care Attorneys (WSSHA)

Chapter 11 – Corporate Practice of Medicine

Author: Luke J. Campbell
Organization: Montgomery Purdue PLLC



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Biographies

Luke J. Campbell

Luke Campbell's practice focuses on representing physicians, dentists and other health care providers in business transactions and regulatory compliance matters. He has represented health care professionals in forming, maintaining, and selling their clinical practices, real estate investments, ambulatory surgical centers, and other joint ventures. Mr. Campbell regularly assists clients in structuring transactions to comply with federal anti-kickback and Stark laws, as well as state anti-rebate, self-referral, and corporate practice of medicine laws. He has significant experience in drafting and negotiating operating agreements, asset purchase and sale agreements, management agreements, and employment agreements. Mr. Campbell is a member of the Health Law Section of the Washington State Bar Association (where he served on the Executive Committee for many years), and the Washington State Society of Healthcare Attorneys, where, as of the date of publication, he serves as a director and officer.

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1 Corporate Practice of Medicine Doctrine: Introduction and Chapter Roadmap

The law has long prohibited certain “learned professions” from practicing through entities, on the theory that only individuals (and not entities) can be licensed. In Washington, such “learned professions” include, without limitation, medicine (including physical therapy),¹ dentistry,² optometry,³ and law.⁴ As applied to healthcare, this prohibition is referred to as the corporate practice of medicine doctrine (or CPM) doctrine. Generally, CPM prohibits unlicensed persons from owning a health care business that provides professional services through licensed individuals.

The justification for the CPM is that the commercialization of professions would destroy professional standards and that the duties of professionals to their clients are incompatible with the commercial interests of business entities. Fundamentally, the policy exists to protect the relationship between the professional and the client.⁵

When might CPM become an issue for a healthcare business or proposed healthcare transaction? As a practical matter the CPM typically becomes a problem in the following situations: (1) enforcement by a government agency; (2) a party seeks to avoid an obligation owed to a healthcare business by alleging a violation of the CPM doctrine; or (3) a third party seeks to stop or recover damages alleging illegal conduct of a healthcare business under the CPM doctrine.

This chapter addresses these scenarios and risks. Section 2 further describes the doctrine by identifying its principal exceptions. Sections 3 and 4, respectively, describe in more detail CPM risk scenarios and common strategies for mitigating that risk, and common strategies for CPM compliance in transactions involving unlicensed individuals.

2 Exceptions to the CPM Doctrine

The CPM doctrine has some notable exceptions or limitations as described below.

¹ *Columbia Physical Therapy, Inc., P.S. v. Benton Franklin Orthopedic Associates, P.L.L.C.*, 168 Wn.2d 421, 430 (2010) (holding that physical therapy is one aspect of the practice of medicine).

² *State v. Boren*, 36 Wn.2d 522, 219 P.2d 566 (1950).

³ *State ex rel. Standard Optical Co. v. Superior Court for Chelan County et al.*, 17 Wn.2d 323, 135 P.2d 839 (1943).

⁴ *State ex rel. Lundin v. Merchants Protective Corp.*, 105 Wash. 12, 177 P. 694 (1919). See also RCW 18.100.030(1) (stating that prior to the passage of Chapter 18.100, discussed below, individuals could not use corporation, without limitation, to provide the following services: “certified public accountants, chiropractors, dentists, osteopaths, physicians, podiatric physicians and surgeons, chiroprodists, architects, veterinarians and attorneys-at-law”). *Am. Chiropractic Clinic, Inc. v. Saunders*, 107 Wn. App. 1002 (2001) (an unpublished case where the parties did not dispute that the practice of chiropractic was a learned profession) .

⁵ *Columbia Physical Therapy, Inc., P.S. v. Benton Franklin Orthopedic Associates, P.L.L.C.*, 168 Wn.2d 421, 431, 228 P.3d 1260 (2010)

2.1 Independent Contractors

First, the state's Supreme Court has indicated that the CPM doctrine does not prevent an unlicensed entity from hiring a licensed professional as an "independent contractor" rather than as an "employee." In *Washington Imaging Servs., LLC v. Washington State Dep't of Revenue*, 171 Wn.2d 548, 558 (2011), an imaging company, organized as a limited liability company, hired a professional corporation as an independent contractor to interpret images and paid the independent contractor a percentage of receipts collected by the LLC.

The court had to decide whether the imaging company had to pay business and occupation tax on the total amount received from patients or could deduct what the imaging company paid the professional corporation before paying such tax. To deduct the payment, among other requirements, the payment had to involve services that the taxpayer did not or could not render.

The imaging company argued that it could not render the professional medical services due to the CPM doctrine, and thus, should not have to pay tax on such services.

However, the court held that such factor was not relevant "where physicians are lawfully hired [by the imaging entity] as independent contractors because of the corporate practice of medicine doctrine". Thus, the court indicated that the CPM doctrine does not prevent an unlicensed entity from hiring a licensed professional as an independent contractor.

2.2 Hospitals

Second, many practitioners believe there is an implied exception for hospitals through Chapter 70.41 RCW, which chapter licenses hospitals to provide medical and surgical services.⁶ However, there are no reported cases addressing this interpretation. But neither are there any known enforcement activity against hospitals employing physicians.

2.3 Professional Service Corporation Act

Third, the Washington legislature, by statute, has provided a "narrow statutory exception" for certain "professional" entities" organized in Washington.⁷ (A foreign "professional" corporation or limited liability company may render professional services in this state so long as each individual rendering professional services in Washington is licensed or authorized to render such professional services in Washington and either (a) each officer in charge of an office Washington is licensed or authorized to practice the profession in Washington or (b) at

⁶ RCW 70.41.020(7) ("Hospital" means any institution, place, building, or agency which provides accommodations, facilities and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care...); RCW 70.41.230(1) ("prior to ... hiring a physician, physician assistant, or advanced registered nurse practitioner who will provide clinical care under his or her license, a hospital or facility approved pursuant to this chapter shall...").

⁷ *Columbia*, 168 Wn.2d at 432. See Chapter 18.100 RCW (the Professional Service Corporation Act or "PSCA"); RCW 18.100.050 (authorizing professional corporations, professional service corporations, and professional nonprofits, including health maintenance organizations, and requiring that individuals appropriately licensed in Washington be the incorporators); RCW 25.15.045 (creating professional limited liability companies and making the PSCA applicable to such entities); RCW 25.05.510 (creating professional limited liability partnership and making the PSCA applicable to such entities).

least one officer and one director of the entity is duly licensed or otherwise legally authorized to practice the profession in Washington.)⁸ These statutory exceptions place limitations on the owners, employees, and type of business for such professional entities organized in Washington.

Specifically, the owners of such a professional entity must all be “duly licensed or otherwise legally authorized to render the same professional services ...”⁹ The statute provides a list of health care professionals licensed in Washington that qualify as the “same profession” for purposes of this requirement.¹⁰

The professional entity may not “engage in any business other than rendering the professional services for which it was incorporated,”¹¹ and the professional services for which it was incorporated (and in which it may therefore engage) are those for which its owners are licensed.¹²

A proxy, voting trust, or other voting agreement with respect to the shares of the professional entity is only valid if it is between persons eligible to be owners of the professional entity.¹³

⁸ RCW 18.100.160; RCW 25.15.051.

⁹ RCW 18.100.050. *See also* RCW 18.100.090. The owner may also be a “qualified trust,” defined as certain voting trusts and charitable remainder unitrusts benefiting qualified owners. RCW 18.100.030(5). Further, for a PLLC, the owner may be another qualified professional corporation or PLLC. RCW 25.15.046(6). *See also* RCW 18.100.120 (requiring that a professional entity list all of its owners in its annual reports filed with the secretary of state).

¹⁰ Effective July 23, 2023 the following licensed professionals constitute the same professional services under RCW 18.100.050: Chapters 18.06 (acupuncturist and eastern medicine practitioner), 18.225 (mental health counselors, marriage and family therapists, and social workers), 18.22 (podiatrist), 18.25 (chiropractor), 18.29 (dental hygienist), 18.34 (dispensing optician), 18.35 (hearing aid specialist, licensed audiologist, licensed speech-language pathologist, or speech-language pathology assistant), 18.36A (naturopathic doctor), 18.50 (midwife), 18.53 (optometrist), 18.55 (ocularist), 18.57 (osteopathic physician and surgeon), 18.59 (occupational therapist and occupational therapist assistant), 18.64 (pharmacists), 18.71 (physician), 18.71A (physician assistant), 18.74 RCW (physical therapist, physical therapist assistant, and other assistive personnel), 18.79 (registered nurse, advanced registered nurse, and licensed practical nurse), 18.83 (psychologists), 18.89 (respiratory care practitioner), 18.108 (animal massage therapist, certified reflexologist, and massage therapist), and 18.138 (certified dietitians or certified nutritionists) RCW. Prior to July 23, 2023, 18.59 (occupational therapist and occupational therapist assistant) and 18.74 RCW (physical therapist, physical therapist assistant, and other assistive personnel) were not included in this list but were separately listed as constituting the same professions as just between themselves. *See* Wash. Legis. Serv. Ch. 60 (H.B. 1082, 2023 Regular Session).

¹¹ RCW 18.100.080.

¹² *Columbia*, 168 Wn.2d at 435 (holding that a PLLC owned by physicians was engaged in the practice of medicine because the physicians were licensed to practice medicine, that the practice of medicine included physical therapy, and that, therefore, the PLLC could employ physical therapists). *See also* RCW 18.100.010 (the legislative intent was to “provide for the incorporation of an individual or group of individuals to render the same professional service to the public for which such individuals are required by law to be licensed or to obtain other legal authorization.”) The professional entity is allowed to invest its funds in real estate, personal property, mortgages, stocks, bonds, insurance, or any other type of investments. RCW 18.100.080.

¹³ RCW 18.100.095.

Further, all the directors and officers of such a professional entity (except for the secretary and treasurer) must be licensed professionals,¹⁴ and the professional entity must have a director or officer (or for a PLLC, a manager) licensed in Washington.¹⁵

Except if done by operation of law or a court decree, a transfer of shares to a person not qualified as a shareholder under the act is prohibited and void.¹⁶ If a shareholder dies or become ineligible, or if their shares are transferred by operation of law or a court decree to an ineligible person, and if there is currently another eligible shareholder, then the shares may be repurchased pursuant to private agreement, or if that does not occur within twelve months, must be repurchased pursuant to the dissenter rights provisions of the corporation statute.¹⁷

2.4 Dental Firms.

Finally, dental firms have some flexibility based on action by the state legislature. Historically, courts have more strictly applied the CPM doctrine in the dental context likely because the underlying statute defines the practice of dentistry as including owning, maintaining, or operating an office for the practice of dentistry.¹⁸

This strict enforcement led to a 2017 law, which, if certain requirements are met, allows dental support organizations to receive a fee from dental practices (including a percentage fee) in return for leasing assets, providing management services, and providing personnel other than dental personnel.¹⁹ This law also provided a specific list of activities that, if carried out by an unlicensed person, interfered with a licensed dentist's independent clinical judgment and constituted the unlicensed practice of dentistry.²⁰

3 Risk and Practical Implications of Violating the CPM Doctrine

As described in the introduction, the risks in CPM disputes generally occur when a third party seeks to stop or recover damages or avoid obligations by alleging illegal conduct of a healthcare business under the CPM doctrine; or there is enforcement by a government agency.

Third parties have had mixed success in stopping and/or recovering damages from the illegal conduct of the party violating the CPM doctrine. In the *Columbia* case, a group of physical therapists sued a competing group of medical doctors that employed physical therapists, alleging

¹⁴ RCW 18.100.065.

¹⁵ RCW 18.100.060(2); RCW 25.15.048 (2).

¹⁶ RCW 18.100.110; RCW 18.10.114. See also RCW 18.100.116 (providing a procedure for dealing with a shareholder dying or becoming ineligible, or a transfer by operation of law or court decree to an ineligible shareholder).

¹⁷ RCW 18.100.116. See also 18.100.118 (providing a procedure if there are no eligible shareholders).

¹⁸ RCW 18.32.020(3) (“A person practices dentistry, within the meaning of this chapter, who ... owns, maintains, or operates an office for the practice of dentistry ...”). See also RCW 18.32.675(1) (“No corporation shall practice dentistry...”).

¹⁹ RCW 18.32.675-.683. A 2018 amendment to these sections authorized the employment of dentists by nonprofit integrated care delivery systems if certain conditions are met.

²⁰ RCW 18.32.677.

that the employment of physical therapists (or the ownership of the practice) by persons not licensed as physical therapists violated the CPM doctrine.²¹ The Supreme Court of Washington dismissed the CPM doctrine claim on its merits but did not address whether the PSCA or CPM doctrine gives a private right of action to injured parties.

In a federal district court case,²² State Farm sued individuals who allegedly had violated the CPM doctrine to recoup \$800,000 in fees that State Farm paid to those individuals for massage and physical therapy services on behalf of its insureds (and persons injured by its insureds). The district granted the defendants' motion to dismiss, holding that there was no private right of action for State Farm under either the CPM doctrine or the PSCA. The district court characterized *Columbia* as merely holding the physicians did not violate the PSCA, not that the PSCA included a private right of action. The court noted that other Washington cases merely refused to enforce contracts between parties that violated the CPM doctrine and did not provide affirmative relief.

Next, third parties have successfully used the CPM violations to avoid obligations owed to the violating party. In evaluating a possible CPM violation, courts consider two factors in tandem: (1) the extent to which the unlicensed parties exercise control over the medical practice's operations; and (2) the nature of the payment scheme between the medical practice and unlicensed parties.

For example, in *Fallahzadeh v. Ghorbanian*,²³ a dentist and a non-dentist owned a building as tenants in common. They entered into a lease whereby the dentist paid the non-dentist rent equal to 50% of the practice's net profits. The dentist failed to pay rent, and the non-dentist sued to evict and collect back rent. The dentist defended the action by claiming the lease violated the CPM doctrine, and thus, was illegal.

While the court acknowledged that the dentist retained complete control of all business and professional activities for his practice, this was not determinative. Instead, the court also looked at the nature of the financial relationship between the parties.

The court noted that percentage payments were not unlawful per se, but the fact that the rent grossly exceeded fair market value²⁴ indicated that the landlord had obtained the benefits of a dental practice ownership in violation of the law. The court held that the lease constituted an illegal partnership that violated the CPM doctrine. The court refused to enforce the illegal lease against the dentist.²⁵

²¹ *Columbia*, 168 Wn.2d 421. At the time of this case, RCW 18.100.050 did not list licensed physical therapist as providing the "same professional services" as physicians. The statute was amended effective July 23, 2023 to include both licenses in the same professional services. See Wash. Legis. Serv. Ch. 60 (H.B. 1082, 2023 Regular Session).

²² *State Farm Mut. Auto. Ins. Co. v. Jacobs*, C14-5512 RBL, 2014 WL 5470623 (W.D. Wash. Oct. 28, 2014).

²³ 119 Wn. App. 596, 82 P.3d 684 (2004)

²⁴ The landlord charged about \$22,000 a month compared to fair market value of about \$3,700.

²⁵ Other pertinent cases includes the following: *Morelli v. Ehsan*, 110 Wn.2d 555, 756 P.2d 129 (1988) (holding that (1) a limited partnership whereby a physician and nonphysician operated a medical clinic, sharing equally in profits and losses, was illegal, and (2) the plaintiff was not entitled to accounting of assets of the illegal partnership); *OCA, Inc. v. Hassel*, 389 B.R. 469, 472 (E.D. La. 2008) (refusing enforce a long term management agreement that gave the manager significant control over a dental practice's patient billing, exclusive control over revenue and bank accounts, plus a fee equal to \$22.22 per patient hour plus

Finally, the government may take enforcement action against the party violating the CPM doctrine. Several older cases involved direct action by the government. For example, in a 1943 case, the state and county brought an action to revoke a corporate charter due to the corporation unlawfully practicing optometry.²⁶ In recent times, the government tends to handle these issues through administrative actions, which are described in further detail below.

A notable exception, however, was *State v. Pac. Health Ctr., Inc.*,²⁷ a case in which Washington's Attorney General brought a consumer protection act (CPA) action against a corporation and its owner for engaging in the unlicensed practice of medicine. The defendants offered services to people with various afflictions and told them the services could help them feel better. Specifically, the defendants used electrodermal testing (EDT) to detect imbalances in "Qi", the Oriental medicine concept of energy flow in the body. The court found that this did constitute the unlicensed practice of medicine, but it refused to find that the unlicensed practice of medicine constituted a per se CPA violation. The court said that the state had to prove the defendants deceived the public as to their actual skills or ability to help, which the state had not done in its summary judgment motion. Since the defendants had not claimed to be licensed to practice medicine (and specifically disclosed to the public that they were not licensed), simply being unlicensed was not a CPA violation. While this case did not involve a direct CPM claim, it demonstrates the government has tools and may, at times, be motivated to pursue both individuals and entities engaged in the unlicensed practice of medicine.

Most recent government cases, however, have involved the agencies responding to complaints and investigating the unlicensed persons and/or the licensed professionals enabling such unlicensed persons (i.e., it is unprofessional conduct for a licensed individual to "aid or abet" the unlicensed practice).²⁸

An investigation of an unlicensed person is typically handled by the Unlicensed Practice Program²⁹ whereas an investigation of a licensed person for enabling an unlicensed person is

50% of the practice's profits); *Am. Chiropractic Clinic, Inc. v. Saunders*, 107 Wn. App. 1002 (2001) (unpublished) (refusing to enforce a contract with a non-professional corporation owned by a licensed chiropractor's trust); *Choong H. Lee, DMD, PLLC v. Thaheld/Lee-01, LLC*, 179 Wn. App. 1047 (2014) (unpublished) (refusing to enforce a forty-year management contract that provided the management company with up to 50% of the dental practice's profits, including on a sale, and provided the management company with substantial control over the dental practice, including the right to enter into contracts, approve expenditures, and handle all financial accounts). *But see Prichard v. Conway*, 39 Wn.2d 117, 234 P.2d 872 (1951) (enforcing a contract whereby the widow of deceased dentist sold the dental practice under a conditional sales contract reserving title and the lease in her name and providing for monthly payments plus more than 50% of the net profits for 5 years)

²⁶ See *State ex rel. Standard Optical Co. v. Superior Court for Chelan County et al.*, 17 Wn.2d 323, 135 P.2d 839 (1943). See also *State v. Boren*, 36 Wn.2d 522, 219 P.2d 566 (1950). RCW 18.100.100 (requiring that, when it know of the activity, the Secretary of State request that the Attorney General dissolve a professional entity if its director, officer, shareholder, agent or employee renders professional services but is not legally qualified to render such services and does not sever ties with the professional entity).

²⁷ 135 Wn. App. 149 143 P.3d 618 (2006).

²⁸ RCW 18.130.180(10).

²⁹ This program is within the Health Systems Quality Assurance division of the Department of Health and is administered by the Secretary of the Department of Health (not the board or commission that regulates the profession).

typically handled by the board or commission that holds jurisdiction over the profession in question (i.e., the Medical Commission, Dental Commission, etc.).

For example, in published guideline on serving as a medical director, the Medical Commission advises practitioners “to be wary of entering into arrangements with unlicensed person” because those “may entail legal risks involving aiding or abetting the unlicensed practice of medicine, the corporate practice of medicine, and violating fee-splitting, rebating or anti-kickback laws”. The guideline also advises practitioners to make sure they are fulfilling the professional obligations “inherent” in servings as medical directors, and provides a list of what the Medical Commission believes a medical director should do.³⁰

In an early Unlicensed Practice Program case,³¹ Paul Wendler, an unlicensed individual, owned and managed a company that hired an advanced registered nurse practitioner (ARNP) and naturopath to provide patients with medical marijuana authorizations. Mr. Wendler determined the frequency and duration of patient care and the expiration date for authorizations, set the fees, collected the revenue from patients, maintained the medical records, and refused to provide the records to the healthcare professionals when they quit. Even though Mr. Wendler apparently hired the healthcare professionals as independent contractors, the state alleged that they were employees “under the management and control of [Dr. Wendler]” and “not independent practitioners operating individual health care businesses at a passive venue.” The state concluded that Mr. Wendler’s conduct and active management over patient care constituted the unlicensed practice of medicine, brought an action, and obtained a stipulated settlement.

Starting in 2013, the government received complaints about and investigated several cases involving individuals and corporate entities providing various levels of administrative and accounting services to dental organizations. The specifics of the complaints varied, but a common concern was the impact non-dentists had on the provision of clinical care to patients. The Unlicensed Practice Program took the lead on these cases, but they often involved companion investigations by the Dental Commission against the licensed dentists. The primary focus of the Unlicensed Practice Program was on the amount of control the non-dentist individuals and corporate entities could have exerted over clinical care if the letter of the business agreements were enforced. A secondary focus was the structure of compensation paid by the dentist to the entities which was based on a percentage of the practice’s gross revenue rather than a fixed monthly amount.

³⁰ See Medical Directors: Roles, Duties, and Responsibilities, Washington Medical Commission, GUI2020-02, August 21, 2020, available at: <https://wmc.wa.gov/policies-rules>.

³¹ *In the Matter of Paul Wendler*, No. M2013-571. See materials in Appendix 1.

The Unlicensed Practice Program took formal action against two management companies.³² The Comfort Dental case³³ involved a franchisor entering into franchise agreements with dentists. The agreements restricted the vendors a dentist could use, required participation in a marketing fund, had mandatory hours of operation, restricted the transfer of ownership of the dental practice, included a noncompete, and had compensation based on revenue. The state brought several actions alleging the unlicensed practice of dentistry, which all ended in an agreed order containing a cease-and-desist requirement as well as a \$340,000 civil fine.

Similarly, the Half Dental case³⁴ involved a management contract with a dentist that included control of all business records, billing and collection duties, the ability to hire support personnel, control over bank accounts, control over litigation in the dentist's name, a 100-mile noncompete, and compensation based on revenue and profits.³⁵ The case resulted in an agreed order in which Half Dental agreed to stop all activity that constituted the practice of dentistry in Washington and to refund all prepaid fees it had received from patients. In a companion case, the Dental Commission brought an action against an involved dentist for aiding and abetting the unlicensed practice of dentistry, which ended in an agreed order reprimanding the dentist and imposing a small fine.³⁶

4 Common Strategies for Corporate Practice of Medicine Compliance in Transactions Involving Unlicensed Individuals

Unlicensed investors (such as private equity firms, etc.) often desire to invest in the practices of healthcare professionals but need to employ creative structures to comply with the CPM doctrine. Common strategies include the independent contractor model and variants on friendly or captive professional corporation model, although all of these models carry risks in Washington.

In the independent contractor model, the unlicensed investors form and own a non-professional entity that hires professionals as independent contractors to provide professional services. Although not directly tested by Washington courts, the argument is that this model complies with the CPM doctrine because the law should not deem the non-professional entity to be involved in the practice of medicine based on the activity of its independent contractors. However, in this model, a tension often exists between the non-professional entity wanting to control the practice (e.g., own the patient records, bill patients for medical services, impose restrictive covenants on

³² The state closed several complaints after investigating, including the following: (a) *Madugula, PLLC (Aspen Dental)*, Case No. 2013-715 and the companion investigation involving *Dr. K. Madugula*, Case No. 2013-8813; (b) *Pacific Dental Services*, Case No. 2014-6499 and the companion investigation involving *Dr. W. McGlashan*, Case No. 2014-6498; and (c) *Aspen Dental*, Case No. 2015-7848 and the companion investigation involving *Dr. K. Frisinger*, Case No. 2013-3766.

³³ *In the Matter of Comfort Dental Group, Inc., et al.*, No. M2016-156. See materials in Appendix 2. See also Case Nos. 2014-5904, 2014-5903, 2014-4364, and 2016-5230 and Master Case Nos. M2016-153, M2016-154, and M2016-695.

³⁴ *In the Matter of Implants Dentures & Dental, Inc. dba Half Dental, Inc., Half Dental WA, Inc., Brandon D'Haenens, and Jason McKew*, Master Case No. 2014-442. See materials in Appendix 3. See also Case No. 2013-731.

³⁵ In response to lobbying by both dental practices and management companies, the legislator passed SB 5322 in 2017, modifying RCW 18.32.675 and providing statutory guidelines for dental support organizations such as the ones involved in these cases.

³⁶ *In the Matter of Avery Elmer Harrison*, No. M2015-115. See materials in Appendix 4.

providers, set schedules, etc.) and the legal requirements to maintain an independent contractor relationship, which can include, for example, freedom from the control of the hiring party. The more control the non-professional entity asserts, the more the relationship looks like that of an employer and employee rather than a principal and independent contractor. This tension often makes this strategy unworkable and less popular.

Next, the professional corporation models (or PC models) typically involve a professional practice, management company, a management agreement, and in some cases, restrictions on the practice. The professional practice is solely owned by licensed professionals and the management company is owned by the unlicensed investors. The owners of the practice may also be minority owners in the management company, which helps to align interests.

The practice usually transfers to the management company all tangible assets and contracts that do not directly relate to the practice of medicine (i.e., the management company would take over real estate and equipment leases, but not payer agreements, professional employment agreements, etc.).

The practice and management company then enter into a management contract, which may include some or all of the following terms. The contract may involve a long-term commitment that the practice can only terminate if the management company commits a material breach. The management company typically provides administrative services to the practice (i.e., billing, financial oversight, contracting, budgeting, strategic planning, equipment and facilities maintenance, benefits management, etc.). The management company may employ the non-licensed workers necessary for the operation of the practice. The management company may also lease to the practice its real estate and equipment and may license to the practice a trade name or other intellectual property. With the assistance of the management company, the practice retains responsibility for the medical side of the business (i.e., contracting licensed healthcare workers, entering into payer contracts and drug supply contracts, etc.). The practice and management company may create joint boards or committees to provide recommendations on budgeting, expansion, staffing, and other strategic items.

In return for these services, the practice pays the management company a fee. This may consist of an amount equal to all direct expenses incurred by the management company on behalf of the practice, plus (depending on federal or state law restrictions) all or a significant portion of the remaining balance of practice revenues after payment of salaries and benefits of clinical personnel employed by the practice. The parties often obtain an independent valuation or have other evidence establishing the fair market value of the management fee since the management relationship can implicate the federal anti-kickback statute, the federal physician self-referral law (aka Stark Law), and/or state fee-splitting laws.

In the PC model, the most conservative approach is to keep the practice's ownership and management completely separate and independent from the management company. This is often referred to as the independent PC model.

However, some transactions also involve the management company (or its investors) placing restrictions on the ownership and/or control of the practice. This is often referred to as the "captive" or "friendly" PC model.

Under the captive PC model, the investors may identify one or more supportive professionals to serve as the owner and director of the captive practice. The management company and the professional enter into contractual restrictions in the form of a stock transfer restriction agreement or succession agreement, which restricts the professional shareholder/director from taking certain actions without the consent of the management company, such as mergers, sales of assets, paying dividends or distributions, entering into contracts, hiring and firing of employees and other actions that have a financial or governance impact on the friendly practice. The practice and management company may also have a loan agreement, which would grant the management company similar rights pursuant to loan covenants and may also provide a security interest in the practice's assets. Under a stock transfer or successor agreement, the management company also controls the transfer of the professional's ownership interest and can direct the professional to transfer the interest to a successor professional that would enter into a similar stock transfer restriction agreement. Alternatively, the management company may have the option to purchase the professional practice's assets at a fixed price, which option right the management could assign to a successor of the practice.

The PC models present material risks in Washington because, as described above, the courts have shown a willingness to look beyond formalities and into the essential nature of the relationship. For example, if the payments from the practice to the management company do not reflect fair market value for services but instead appear to reflect a return on an ownership interest, a Washington court may find that the relationship violates the CPM doctrine. Further, a court may view the ability of an unlicensed individual to restrict the transfer of stock and indirectly control its ownership as a violation of the CPM doctrine. The parties should carefully consider their business needs and the potential legal risk to arrive at terms that appropriately balance these concerns.

5 Conclusion

In conclusion, Washington's CPM doctrine applies in the health care context. Washington courts analyze the substance of transactions (rather than just its form) in determining whether parties have complied with the CPM doctrine. Noncompliance creates risks from government enforcement actions, third parties attempting to avoid obligations owed to the party violating the doctrine, or third parties attempting to stop or recover damages from conduct that violates the doctrine. As such, parties should seek to comply with the CPM doctrine, and when indicated, mitigate risks related to potential noncompliance.

APPENDIX TABLE
CPM Doctrine in Washington

NO	CASE NAME
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1. Paul Wendler Matter
2. Comfort Dental Group, Inc. Matter
3. Half Dental WA, Inc. Matter
4. Avery Elmer Harrison Matter

APPENDIX 1

Paul Wendler Matter

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
SECRETARY OF HEALTH

In the Matter of

No. M2013-574

PAUL WENDLER

STIPULATED FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
AGREED ORDER TO CEASE AND
DESIST

Respondent

The Unlicensed Practice Program (Program), by and through Alexander H. Lee, Department of Health Staff Attorney, and, Respondent Paul Wendler, represented by counsel, Josephine Townsend, stipulate and agree to the following:

1. PROCEDURAL STIPULATIONS

1.1 On October 29, 2013, the Program served on Respondent a Notice of Intent to Issue Cease and Desist Order (Notice), which alleges that Respondent violated RCW 18.130.020(12)(a) and RCW 69.51A.010(2), by engaging in the "corporate practice of medicine" and conduct constituting unlicensed practice as the business owner of medical marijuana clinics in the state of Washington.

1.2 Respondent understands that the State is prepared to proceed to a hearing on the allegations in the Notice.

1.3 Respondent understands that if the allegations are proven at a hearing, the Secretary of Health has the power and authority to issue a permanent Cease and Desist Order and impose a fine under RCW 18.130.190.

1.4 Respondent has the right to defend against the allegations in the Notice by presenting evidence at a hearing.

1.5 Respondent waives the opportunity for a hearing on the Notice provided that the Secretary of Health accepts this Stipulated Findings of Fact, Conclusions of Law, and Agreed Order to Cease and Desist (Agreed Order).

1.6 The parties agree to resolve this matter by means of this Agreed Order.

1.7 Respondent understands that this Agreed Order is not binding unless and until it is signed by the Health Law Judge and served by the Adjudicative Clerk Office.

1.8 The Agreed Order is a public document and is subject to public disclosure.

STIPULATED FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND AGREED ORDER TO CEASE AND DESIST
NO. M2013-574

PAGE 1 OF 6

Rev 5/13

ORIGINAL

1.9 If the Secretary of Health rejects this Agreed Order, Respondent waives any objection to the participation at hearing of the Presiding Officer who heard the Agreed Order presentation.

2. FINDINGS OF FACT

The state and Respondent acknowledge that the evidence is sufficient to justify the following findings for the purposes of this Agreed Order:

2.1 Respondent is not licensed as a health care provider in Washington State.

2.2 Respondent is the owner and managing operator of South Sound Medicine (SSM), with locations in Lacey and Vancouver, Washington. SSM is a registered for profit corporation. Paul Wendler is the president.

2.3 SSM employs health care professionals who provide patients with medical marijuana authorizations.

2.4 Respondent interfered with the health care provided by at least two (2) of these health care professionals, and exerted control over their patient care.

2.5 Respondent's interference with patient care and control over patient care at SSM constitutes "unlicensed practice" of professions listed in RCW 69.51A.010(2), because the Respondent does not have the requisite health care credential necessary to provide patient care, including authorizing the medical use of cannabis. Among the professions listed in RCW 69.51A.010(2) are advanced registered nurse practitioners and licensed naturopaths.

2.6 Sharol Chavez, an Advanced Registered Nurse Practitioner, was employed by SSM from about February 2011 to October 2011. Ms. Chavez disclosed to the Department of Health investigator that Respondent determined the frequency and duration of patient care for her patients. She also disclosed that Respondent determined what the expiration date would be for the medical marijuana authorizations that she provided to patients.

2.7 Ms. Chavez disclosed that the Respondent set the fee for patients seeking medical marijuana authorizations, received payment from the patients, and then paid her cash compensation for each medical marijuana authorization provided to the patient.

2.8 In or about October 2011, Ms. Chavez resigned. After that, Respondent denied her access to her patients' records (approximately three thousand (3000) patient charts), warned all patients at SSM that she would try to solicit them, and advised them to seek continued treatment at SSM.

2.9 In or about October 2011, Respondent hired Dr. Corie Linn, a licensed naturopathic doctor. Dr. Linn disclosed to the DOH investigator that Respondent engaged in patient care by creating and enforcing all policies regarding the frequency and duration of patient care, including who she would examine and under what circumstances. Dr. Linn also shared that Respondent determined what the expiration date would be for medical marijuana authorizations provided to patients, and established pricing for all patient exams. Dr. Linn admitted in some circumstances, she could not write an authorization for one (1) year, but was instead required to provide the authorization for a six (6) month period which would require the patient to return to SSM sooner.

2.10 On or about September 15, 2012, Dr. Linn submitted her resignation letter informing Respondent that she had decided to leave SSM and open her own clinic with two (2) weeks notice. This resignation letter expressed the need to maintain continuity of care for her patients. However, once again Respondent locked Dr. Linn out of the electronic patient database so she could not access her patient records.

2.11 Both Ms. Chavez and Dr. Linn were prevented from practicing with full autonomy because of Respondent's active management over patient care. Respondent's active management over the care of Dr. Linn's and Ms. Chavez's patients constitutes the unlicensed practice of naturopathy and the advanced registered nurse practitioner profession.

3. CONCLUSIONS OF LAW

Respondent and the Program agree to entry of the following Conclusions of Law:

3.1 The Secretary of Health, acting through the Presiding Officer, has jurisdiction over Respondent and over the subject matter of this proceeding.

3.2 Respondent has engaged in the unlicensed practice as the business owner of medical clinics in the state of Washington, in violation of RCW 18.130.020(12)(a) and RCW 69.51A.010(2).

3.3 The above violations provide grounds for the issuance of a permanent Cease and Desist Order under RCW 18.130.190.

4. AGREED ORDER

Based on the Findings of Fact and Conclusions of Law, Respondent agrees to entry of the following Agreed Order:

4.1 Respondent shall permanently **CEASE AND DESIST** from engaging in any and all conduct in providing medical marijuana authorizations through SSM, unless Respondent has first obtained the requisite health care credential or otherwise meets an exception.

4.2 Respondent shall pay a civil fine in the amount of ten thousand dollars (\$10,000.00) within six (6) months of the effective date of this order. The fine shall be paid by certified or cashier's check or money order, made payable to the Department of Health, and mailed to the Department of Health, Unlicensed Practice Program, PO Box 1099, Olympia, WA 98507-1099.

4.3 The effective date of this Agreed Order is the date the Adjudicative Clerk Office places the signed Agreed Order into the U.S. mail. If required, Respondent shall not submit any fees or compliance documents until after the effective date of this Agreed Order.

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5. ACCEPTANCE

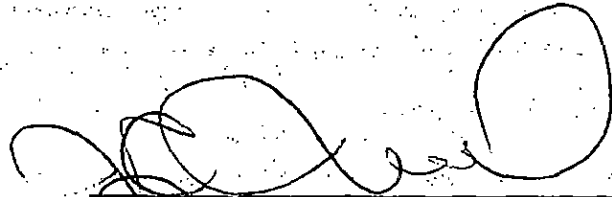
I, PAUL WENDLER, Respondent, have read, understand and agree to this Agreed Order. This Agreed Order may be presented to the Secretary of Health without my appearance. I understand that I will receive a signed copy if the Secretary of Health accepts this Agreed Order.



PAUL WENDLER
RESPONDENT

3-5-14

DATE



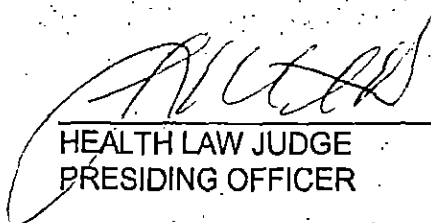
JOSEPHINE C. TOWNSEND, WSBA #31965
ATTORNEY FOR RESPONDENT

3/5/14
DATE

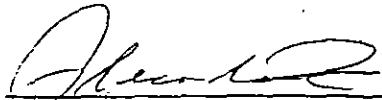
6. ORDER

The Secretary of Health accepts this Stipulated Findings of Fact, Conclusions of Law, and Agreed Order to Cease and Desist. It is ordered that all parties shall be bound by the terms and conditions of Section 4.

DATED: March 7, 2014


HEALTH LAW JUDGE
PRESIDING OFFICER

PRESENTED BY:


ALEXANDER H. LEE, WSBA #35824
DEPARTMENT OF HEALTH STAFF ATTORNEY

3/6/14
DATE

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
SECRETARY OF HEALTH

In the Matter of

PAUL WENDLER

Respondent

No. M2013-574

NOTICE OF INTENT TO ISSUE CEASE
AND DESIST ORDER

David Magby, Director of the Unlicensed Practice Program (Program), on designation by the Secretary of Health, makes the allegations below, which are supported by evidence contained in program case file nos. 2011-162597 and 2012-9026.

1. FACTUAL ALLEGATIONS

1.1 Respondent is not licensed as a health care provider in Washington State.

1.2 Respondent is the owner and managing operator of South Sound Medicine (SSM), with locations in Lacey, Washington; Vancouver, Washington; and other locations in Pierce and King Counties. SSM is a registered for profit corporation. Paul Wendler is the president.

1.3 SSM employs health care professionals who provide patients with medical marijuana authorizations.

1.4 Respondent interfered with the health care provided by at least two (2) of these health care professionals, and exerted control over their patient care.

1.5 Respondent's interference with patient care and control over patient care at SSM constitutes "unlicensed practice" of professions listed in RCW 69.51A.010(2), because the Respondent does not have the requisite health care credential necessary to provide patient care, including authorizing the medical use of cannabis. Among the professions listed in RCW 69.51A.010(2) are advanced registered nurse practitioners and licensed naturopaths.

1.6 Sharol Chavez, an advanced registered nurse practitioner, was employed by SSM from in or about February 2011 to October 2011. During this time Respondent determined the frequency and duration of patient care for Ms. Chavez's patients. Among other things, Respondent determined what the expiration date would be for the medical marijuana authorizations that Ms. Chaves provided her patients.

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ORIGINAL

1.7 Respondent set the fee for patients seeking medical marijuana authorizations, received payment from the patients, and then paid Ms. Chavez cash compensation for each medical marijuana authorization provided to a patient.

1.8 In or about October 2011, Ms. Chavez resigned. After that, Respondent denied her access to her patients' records (approximately three thousand (3000) patient charts), warned all patients at SSM that she would try to solicit them, and advised them to seek continued treatment at SSM.

1.9 In or about October 2011, Respondent hired Dr. Corie Linn, a licensed naturopathic doctor. Once again, Respondent engaged in patient care by creating and enforcing all policies regarding the frequency and duration of patient care, including who Dr. Linn would examine and under what circumstances. Once again, Respondent determined what the expiration date would be for medical marijuana authorizations provided to patients by Dr. Linn, and established pricing for all patient exams. In some circumstances, Dr. Linn could not write an authorization for one (1) year, but was instead required to provide the authorization for a six (6) month period which would require the patient to return to SSM sooner.

1.10 On or about September 15, 2012, Dr. Linn submitted her resignation letter informing Respondent that she had decided to leave SSM and open her own clinic with two (2) weeks notice. This resignation letter expressed the need to maintain continuity of care for her patients. However, once again Respondent locked Dr. Linn out of the electronic patient database so she could not access her patient records. According to Dr. Linn, Respondent provided medical advice directly to her patients and modified patient treatment plans after she left SSM.

1.11 Respondent also interfered with Dr. Linn's ability to verify patient treatment for Social Security Disability Claims, because he would not provide the patient records to Respondent to complete the required paperwork.

1.12 SSM used an electronic medical records company called Practice Fusion. Respondent represented himself as a health care provider on the Practice Fusion accounts for patients seen at SSM. This allowed him to acquire access to patient records and obtain the edit level of a health care provider. This enabled Respondent's ability to lock both Ms. Chavez and Dr. Linn out of their electronic patient record accounts.

ORIGINAL

1.13 On or about January 20, 2013, Respondent also utilized Dr. Linn's lab account without her authorization in order to order a hormone panel test for a patient.

1.14 Ms. Chavez and Dr. Linn were employees under the management and control of Respondent. They were not independent practitioners operating individual health care businesses at a passive venue. In fact, the Washington Department of Labor & Industries determined that Dr. Linn was an employee of SSM who was due unpaid wages from the Respondent and cited Respondent for unpaid employee wages.

1.15 Both Ms. Chavez and Dr. Linn were prevented from practicing with full autonomy because of Respondent's active management over patient care. Both Ms. Chavez and Dr. Linn have admitted to providing substandard health care services at SSM under the direction and oversight of Respondent. Respondent's active management over the care of Dr. Linn's and Ms. Chavez's patients constitutes the unlicensed practice of naturopathy and the advanced registered nurse practitioner profession.

2. ALLEGED VIOLATIONS

2.1 The Respondent's operation of medical marijuana clinics in the state of Washington as described above constitutes unlicensed practice in violation of RCW 18.130.020(12)(a) and RCW 69.51A.010(2).

RCW18.130.020 Definitions.

...
(12) "Unlicensed practice" means:

(a) Practicing a profession or operating a business identified in RCW 18.130.040 without holding a valid, unexpired, unrevoked, and unsuspended license to do so

RCW 69.51A.010 Definitions.

...
(2) "Health care professional," for purposes of this chapter only, means a physician licensed under chapter 18.71 RCW, a physician assistant licensed under chapter 18.71A RCW, an osteopathic physician licensed under chapter 18.57 RCW, an osteopathic physicians' assistant licensed under chapter 18.57A RCW, a naturopath licensed under chapter 18.36A RCW, or an advanced registered nurse practitioner licensed under chapter 18.79 RCW.
...

2.2 The violation described in Paragraph 2.1 constitutes grounds for issuance of a cease and desist order pursuant to RCW 18.130.190.

RCW 18.130.190 Practice without license — Investigation of complaints — Cease and desist orders — Injunctions — Penalties.

(1) *The secretary shall investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. In the investigation of the complaints, the secretary shall have the same authority as provided the secretary under RCW 18.130.050.*

(2) *The secretary may issue a notice of intention to issue a cease and desist order to any person whom the secretary has reason to believe is engaged in the unlicensed practice of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. The person to whom such notice is issued may request an adjudicative proceeding to contest the charges. The request for hearing must be filed within twenty days after service of the notice of intention to issue a cease and desist order. The failure to request a hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine. All proceedings shall be conducted in accordance with chapter 34.05 RCW.*

(3) *If the secretary makes a final determination that a person has engaged or is engaging in unlicensed practice, the secretary may issue a cease and desist order. In addition, the secretary may impose a civil fine in an amount not exceeding one thousand dollars for each day upon which the person engaged in unlicensed practice of a business or profession for which a license is required by one or more of the chapters specified in RCW 18.130.040. The proceeds of such fines shall be deposited to the health professions account.*

(4) *If the secretary makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the secretary may issue a temporary cease and desist order. The person receiving a temporary cease and desist order shall be provided an opportunity for a prompt hearing. The temporary cease and desist order shall remain in effect until further order of the secretary. The failure to request a prompt or regularly scheduled hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine.*

(5) *Neither the issuance of a cease and desist order nor payment of a civil fine shall relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy of a cease and desist order or civil fine shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed practice and may be enforced under RCW 7.21.060. This method of enforcement of the cease and desist order or civil fine may be used in addition to, or as an*

alternative to, any provisions for enforcement of agency orders set out in chapter 34.05 RCW.

(6) The attorney general, a county prosecuting attorney, the secretary, a board, or any person may in accordance with the laws of this state governing injunctions, maintain an action in the name of this state to enjoin any person practicing a profession or business for which a license is required by the chapters specified in RCW 18.130.040 without a license from engaging in such practice or operating such business until the required license is secured. However, the injunction shall not relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy by injunction shall be in addition to any criminal liability.

(7)(a) Unlicensed practice of a profession or operating a business for which a license is required by the chapters specified in RCW 18.130.040, unless otherwise exempted by law, constitutes a gross misdemeanor for a single violation.

(b) Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a class C felony punishable according to chapter 9A.20 RCW.

(8) All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be remitted to the health professions account.

2.3 Pursuant to RCW 18.130.190, after due and proper notice, the Secretary of Health is authorized to issue a cease and desist order against a person upon a determination that such person has engaged in or is engaging in the unlicensed practice and operation of a medical marijuana clinic, and may impose a fine of up to one thousand dollars (\$1,000.00) for each day of unlicensed practice.

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3. NOTICE TO RESPONDENT

David Magby, Unlicensed Practice Director, alleges that the conduct referenced herein affects the public health, safety, and welfare; that a notice should be issued and served as provided by law to Respondent giving Respondent the opportunity to respond to the charges from the Department of Health against Respondent for unlicensed practice; and that if Respondent fails to defend against these matters, a permanent Cease and Desist Order may be issued and a civil fine imposed without further notice or opportunity for a hearing.

DATED: October 29, 2013

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
SECRETARY OF HEALTH

David Magby
DAVID MAGBY
UNLICENSED PRACTICE DIRECTOR

Lilia Lopez 10/8/13
LILIA LOPEZ, WSBA #22273
ASSISTANT ATTORNEY GENERAL

APPENDIX 2

Comfort Dental, Inc. Matter



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: Comfort Dental Group, Inc.
Kent McMahan
Graig Bears
CDWA, LLC
Master Case No.: M2016-156
Document: Notice of Intent

Regarding your request for information about the above-named practitioner; attached is a true and correct copy of the document on file with the State of Washington, Department of Health, Adjudicative Clerk Office. These records are considered Certified by the Department of Health.

Certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld: **NONE**

If you have any questions or need additional information regarding the information that was withheld, please contact:

Customer Service Center
P.O. Box 47865
Olympia, WA 98504-7865
Phone: (360) 236-4700
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to the Privacy Officer, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
SECRETARY OF HEALTH

FILED

JUL 05 2016

Adjudicative Clerk Office

In the Matter of

COMFORT DENTAL GROUP, INC.
KENT MCMAHAN
GRAIG BEARS
CDWA, LLC

Nos. M2016-153
M2016-154
M2016-156
M2016-695

NOTICE OF INTENT TO ISSUE CEASE
AND DESIST ORDER

Respondents

Deonna Chartrey, Health Services Consultant for the Unlicensed Practice Program (Program), on designation by the Secretary of Health, makes the allegations below, which are supported by evidence contained in program case file nos. 2014-5904, 2014-5903, 2014-4364, and 2016-6230.

1. FACTUAL ALLEGATIONS

1.1 Respondent Comfort Dental Group, Inc., (Comfort Dental) is a Colorado corporation that conducts business in the State of Washington.

1.2 Respondent CDWA, LLC, is a Washington limited liability company.

1.3 Respondents Graig Bears and Kent McMahan are members and managers of Respondent CDWA. On behalf of Respondent CDWA, Respondent Bears executed the subfranchise agreements referenced below in Paragraphs 1.7 and 1.8.

1.4 Respondents Comfort Dental, CDWA, Bears and McMahan do not currently hold credentials to practice as a dentist in the state of Washington, and have never held such a credential.

1.5 On or about June 19, 2012, Respondent Comfort Dental sold dental office franchise rights to Respondent CDWA.

1.6 In turn, Respondent CDWA has sold dental office subfranchises in at least fourteen (14) separate locations in the State of Washington.

1.7 All of the subfranchise agreements entered into by Respondent CDWA provide for:

- A. Restrictions on which vendors can be used for clinical supplies, lab work (dentures, bridges), janitorial and office supplies.

ORIGINAL

- B. Mandatory participation in a regional marketing fund that is administered by CDWA, LLC.
- C. A three (3) year non-competition within five (5) miles of the existing office and also a non-competition during the term of the subfranchise agreement.
- D. Mandatory hours during which the office must operate.
- E. Restrictions on the transferability of the ownership interest in the subfranchise.

1.8 The subfranchise agreements provide for CDWA to be compensated by the subfranchisees using a monthly five (5) percent "royalty" fee based on gross collections. This formula allows CDWA a substantial beneficial interest in the subfranchise practice's profits.

2. ALLEGED VIOLATIONS

2.1 Respondents' conduct outlined in Section 1 establishes an ownership interest in those respective dental offices. This constitutes the unlicensed practice of dentistry in violation of RCW 18.32.091 based on RCW 18.32.020(3) and RCW 18.32.675.

RCW 18.32.091 License required.

No person, unless previously licensed to practice dentistry in this state, shall begin the practice of dentistry without first applying to, and obtaining a license.

RCW 18.32.020 Practice of dentistry defined.

A person practices dentistry, within the meaning of this chapter, who (1) represents himself or herself as being able to diagnose, treat, remove stains and concretions from teeth, operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, alveolar process, gums, or jaw, or (2) offers or undertakes by any means or methods to diagnose, treat, remove stains or concretions from teeth, operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the same, or take impressions of the teeth or jaw, or (3) owns, maintains, or operates an office for the practice of dentistry, or (4) engages in any of the practices included in the curricula of recognized and approved dental schools or colleges, or (5) professes to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth.

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The fact that a person uses any dental degree, or designation, or any card, device, directory, poster, sign, or other media whereby he or she represents himself or herself to be a dentist, shall be prima facie evidence that such person is engaged in the practice of dentistry.

X-ray diagnosis as to the method of dental practice in which the diagnosis and examination is made of the normal and abnormal structures, parts, or functions of the human teeth, the alveolar process, maxilla, mandible or soft tissues adjacent thereto, is hereby declared to be the practice of dentistry. Any person other than a regularly licensed physician or surgeon who makes any diagnosis or interpretation or explanation, or attempts to diagnose or to make any interpretation or explanation of the registered shadow or shadows of any part of the human teeth, alveolar process, maxilla, mandible or soft tissues adjacent thereto by the use of X-ray is declared to be engaged in the practice of dentistry, medicine, or surgery.

The practice of dentistry includes the performance of any dental or oral and maxillofacial surgery. "Oral and maxillofacial surgery" means the specialty of dentistry that includes the diagnosis and surgical and adjunctive treatment of diseases, injuries, and defects of the hard and soft tissues of the oral and maxillofacial region.

**RCW 18.32.675 Practice or solicitation by corporations prohibited—
Penalty.**

(1) No corporation shall practice dentistry or shall solicit through itself, or its agent, officers, employees, directors or trustees, dental patronage for any dentists or dental surgeon employed by any corporation: PROVIDED, That nothing contained in this chapter shall prohibit a corporation from employing a dentist or dentists to render dental services to its employees: PROVIDED, FURTHER, That such dental services shall be rendered at no cost or charge to the employees; nor shall it apply to corporations or associations in which the dental services were originated and are being conducted upon a purely charitable basis for the worthy poor, nor shall it apply to corporations or associations furnishing information or clerical services which can be furnished by persons not licensed to practice dentistry, to any person lawfully engaged in the practice of dentistry, when such dentist assumes full responsibility for such information and services.

(2) Any corporation violating this section is guilty of a gross misdemeanor, and each day that this chapter is violated shall be considered a separate offense.

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2.2 The violations described in Paragraph 2.1 constitute grounds for issuance of a cease and desist order pursuant to RCW 18.130.190.

RCW 18.130.190 Practice without license — Investigation of complaints — Cease and desist orders — Injunctions — Penalties.

(1) The secretary shall investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. In the investigation of the complaints, the secretary shall have the same authority as provided the secretary under RCW 18.130.050.

(2) The secretary may issue a notice of intention to issue a cease and desist order to any person whom the secretary has reason to believe is engaged in the unlicensed practice of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. The person to whom such notice is issued may request an adjudicative proceeding to contest the charges. The request for hearing must be filed within twenty days after service of the notice of intention to issue a cease and desist order. The failure to request a hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine. All proceedings shall be conducted in accordance with chapter 34.05 RCW.

(3) If the secretary makes a final determination that a person has engaged or is engaging in unlicensed practice, the secretary may issue a cease and desist order. In addition, the secretary may impose a civil fine in an amount not exceeding one thousand dollars for each day upon which the person engaged in unlicensed practice of a business or profession for which a license is required by one or more of the chapters specified in RCW 18.130.040. The proceeds of such fines shall be deposited to the health professions account.

(4) If the secretary makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the secretary may issue a temporary cease and desist order. The person receiving a temporary cease and desist order shall be provided an opportunity for a prompt hearing. The temporary cease and desist order shall remain in effect until further order of the secretary. The failure to request a prompt or regularly scheduled hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine.

(5) Neither the issuance of a cease and desist order nor payment of a civil fine shall relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy of a cease and desist order or civil fine shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed practice and may be enforced under RCW 7.21.060. This method of enforcement of the cease and desist order or civil fine may be used in addition to, or as an

alternative to, any provisions for enforcement of agency orders set out in chapter 34.05 RCW.

(6) The attorney general, a county prosecuting attorney, the secretary, a board, or any person may in accordance with the laws of this state governing injunctions, maintain an action in the name of this state to enjoin any person practicing a profession or business for which a license is required by the chapters specified in RCW 18.130.040 without a license from engaging in such practice or operating such business until the required license is secured. However, the injunction shall not relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy by injunction shall be in addition to any criminal liability.

(7)(a) Unlicensed practice of a profession or operating a business for which a license is required by the chapters specified in RCW 18.130.040, unless otherwise exempted by law, constitutes a gross misdemeanor for a single violation.

(b) Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a class C felony punishable according to chapter 9A.20 RCW.

(8) All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be remitted to the health professions account.

2.3 Pursuant to RCW 18.130.190, after due and proper notice, the Secretary of Health is authorized to issue a cease and desist order against a person upon a determination that such person has engaged in or is engaging in unlicensed practice of dentistry and may impose a fine of up to one thousand dollars (\$1,000.00) for each day of unlicensed practice.

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3. NOTICE TO RESPONDENT

Deonna Chartrey, Health Services Consultant, alleges that the conduct referenced herein affects the public health, safety, and welfare; that a notice should be issued and served as provided by law to Respondent giving Respondent the opportunity to respond to the charges from the Department of Health against Respondent for unlicensed practice; and that if Respondent fails to defend against these matters, a permanent Cease and Desist Order may be issued and a civil fine imposed without further notice or opportunity for a hearing.

DATED: July 5, 2016

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
SECRETARY OF HEALTH


DEONNA CHARTREY
HEALTH SERVICES CONSULTANT


HEATHER A. CARTER, WSBA #30477
ASSISTANT ATTORNEY GENERAL



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: Comfort Dental Group, Inc.
Kent McMahan
Graig Bears
CDWA, LLC
Master Case No.: M2016-156
Document: Cease and Desist Order

Regarding your request for information about the above-named practitioner; attached is a true and correct copy of the document on file with the State of Washington, Department of Health, Adjudicative Clerk Office. These records are considered Certified by the Department of Health.

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The following information has been withheld: **NONE**

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STATE OF WASHINGTON
DEPARTMENT OF HEALTH
SECRETARY OF HEALTH

In the Matter of

COMFORT DENTAL GROUP, INC.
KENT MCMAHAN
GRAIG BEARS
CDWA, LLC

Nos. M2016-153
M2016-154
M2016-156
M2016-695

STIPULATED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND AGREED
ORDER TO CEASE AND DESIST

Respondents

The Unlicensed Practice Program (Program), by and through Kyle Karinen, Department of Health Staff Attorney, and Respondents, represented by counsel, Margaret Breen, stipulate and agree to the following:

1. PROCEDURAL STIPULATIONS

1.1 On July 5, 2016, the Program served on Respondents a Notice of Intent to Issue Cease and Desist Order (Notice), which alleges that Respondents violated RCW 18.32.091 and RCW 18.32.020(3) by engaging in conduct constituting the unlicensed practice of dentistry.

1.2 Respondents understand that the State is prepared to proceed to a hearing on the allegations in the Notice.

1.3 Respondents understand that if the allegations are proven at a hearing, the Secretary of Health has the power and authority to issue a permanent Cease and Desist Order and impose a fine under RCW 18.130.190.

1.4 Respondents have the right to defend against the allegations in the Notice by presenting evidence at a hearing.

1.5 Respondents waive the opportunity for a hearing on the Notice provided that the Secretary of Health accepts this Stipulated Findings of Fact, Conclusions of Law, and Agreed Order to Cease and Desist (Agreed Order).

1.6 The parties agree to resolve this matter by means of this Agreed Order.

1.7 Respondents understand that this Agreed Order is not binding unless and until it is signed by the health law judge and served by the Adjudicative Clerk Office.

1.8 The Agreed Order is a public document and is subject to public disclosure.

STIPULATED FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND AGREED ORDER TO CEASE AND DESIST
NO. M2016-153, M2016-154, M2016-156 & M2016-695

PAGE 1 OF 7

Rev 5/13

ORIGINAL

1.9 If the Secretary of Health rejects this Agreed Order, Respondents waive any objection to the participation at hearing of the presiding officer who heard the Agreed Order presentation.

2. FINDINGS OF FACT

Respondents and the Program stipulate to the following facts:

2.1 Respondent Comfort Dental Group, Inc. is a Colorado corporation that granted a subfranchise agreement in the state of Washington and consents to the jurisdiction of the Secretary of Health in this case.

2.2 Respondent CDWA, LLC is a Washington limited liability company.

2.3 Respondents Graig Bears was a member and manager of Respondent CDWA until approximately January 1, 2016 and Kent McMahan is a member and manager, of Respondent CDWA. On behalf of Respondent CDWA, Respondent Bears executed the subfranchise agreements referenced below in Paragraphs 2.7 and 2.8

2.4 Respondents do not currently hold credentials to practice as a dentist in the state of Washington, and have never held such a credential.

2.5 On or about June 19, 2012, Respondent Comfort Dental sold dental office franchise rights to Respondent CDWA.

2.6 In turn, Respondent CDWA has sold dental office subfranchises in at least fourteen (14) separate locations in the state of Washington.

2.7 All of the subfranchise agreements entered into by Respondent CDWA provide for:

- A. Restrictions outside the scope of reasonably objective standards on which vendors can be used for clinical supplies, lab work (dentures, bridges), janitorial, and office supplies.
- B. A non-competition agreement affecting a broad geographic area during the term of the subfranchise agreement, and a broad noncompetition after its term.
- C. Restrictions on the transferability of the ownership interest in the subfranchise beyond those needed for the transferee to comply with state licensing requirements

//

2.8 The subfranchise agreements provide for CDWA to be compensated by the subfranchisees using a monthly five percent "royalty" fee based on gross collections. This formula allows CDWA a substantial beneficial interest in the subfranchise practice's profits.

3. CONCLUSIONS OF LAW

Respondents and the Program agree to entry of the following Conclusions of Law:

3.1 The Secretary of Health, acting through the presiding officer, has jurisdiction over Respondents and over the subject matter of this proceeding.

3.2 None of the four Respondents provided direct treatment to patients. However, Respondent Comfort Dental Group executed the subfranchise agreement with CDWA that licensed several of its intellectual property assets for use in the State of Washington, including the dental practice business model that included the provisions mentioned in Paragraphs 2.7 and 2.8. Respondent CDWA, through execution by respondents McMahan and Bears, is a party to subfranchise agreements containing provisions described Paragraphs 2.7 and 2.8 which the Secretary, on review, has deemed to be unlicensed practice of dentistry in violation of RCW 18.32.091 and RCW 18.32.020(3).

3.3 The above violations provide grounds for the issuance of a permanent Cease and Desist Order under RCW 18.130.190.

4. AGREED ORDER

Based on the Findings of Fact and Conclusions of Law, Respondents agree to entry of the following Agreed Order:

4.1 Respondents shall permanently **CEASE AND DESIST** from engaging in any and all conduct constituting the practice of dentistry in the state of Washington, unless Respondents have first obtained the requisite health care credential or otherwise meet an exception. As part of their cessation, Respondents have agreed to reform each of CDWA's subfranchise agreements to conform with Washington law within eighteen (18) months of the effective date of this Agreed Order.

4.2 Respondents shall pay a civil fine in the amount of three hundred forty thousand dollars (\$340,000.00) within six (6) months of the effective date of this Agreed Order. The fine shall be paid by certified or cashier's check or money order, made

payable to the Department of Health, and mailed to the Department of Health, Unlicensed Practice Program, PO Box 1099, Olympia, WA 98507-1099.

4.3 The Program agrees to stay collection of all but twenty-five thousand dollars (\$25,000.00) of the fine agreed to under Paragraph 4.2 based on Respondents' compliance with the terms and conditions of this Agreed Order.

4.4 The Program and Respondent agree that this Agreed Order is intended to reflect a final resolution to the matters addressed in Program case file nos. 2014-5904, 2014-5903, 2014-4364, and 2016-6230. The Program agrees it will not take any further action against Respondents with respect to payments made, amounts owed, and actions taken under the subfranchise agreements for periods before the entry of this Agreed Order and until the subfranchise agreements are reformed as previously agreed between Respondents and the Program.

4.5 The effective date of this Agreed Order is the date the Adjudicative Clerk Office places the signed Agreed Order into the U.S. mail. If required, Respondent shall not submit any fees or compliance documents until after the effective date of this Agreed Order.

5. ACCEPTANCE

COMFORT DENTAL GROUP, INC., GRAIG BEARS, KENT MCMAHAN, and CDWA, LLC, Respondents, have read, understand and agree to this Agreed Order. This Agreed Order may be presented to the Secretary of Health without an appearance by any of the Respondents. Respondents understand that they will each receive a signed copy if the Secretary of Health accepts this Agreed Order.

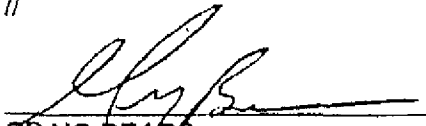
COMFORT DENTAL GROUP, INC., a Colorado corporation



By: _____
Its: COO

02/28/2017
DATE

//



GRAIG BEARS

2/28/17
DATE

//

KENT MCMAHAN

DATE


//

CDWA, LLC, a Washington limited liability company

By:
Its: _____

DATE

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MARGARET GREEN, WSBA #17986
ATTORNEY FOR RESPONDENTS

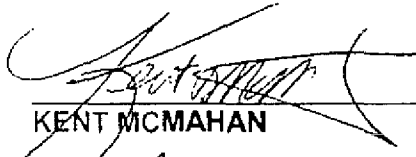
02-28-2017
DATE

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CRAIG BEARS

DATE

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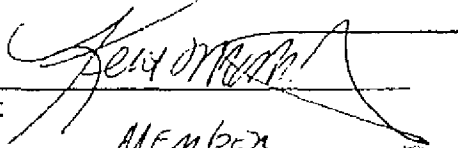


KENT MCMAHAN
2-28-17

DATE

//

CDWA, LLC, a Washington limited liability company



By: _____
Its: MEMBER

2-28-17

DATE

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MARGARET BREEN, WSBA #17986
ATTORNEY FOR RESPONDENTS

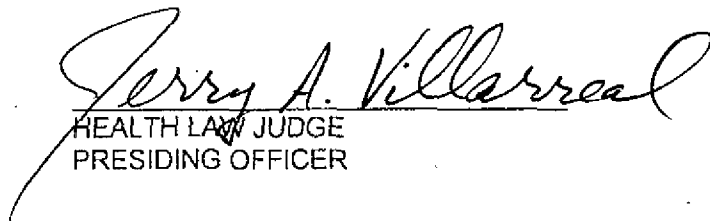
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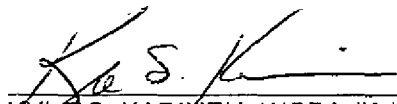
6. ORDER

The Secretary of Health accepts this Stipulated Findings of Fact, Conclusions of Law, and Agreed Order to Cease and Desist. It is ordered that all parties shall be bound by the terms and conditions of Section 4.

DATED: MARCH 8, 2017


HEALTH LAW JUDGE
PRESIDING OFFICER

PRESENTED BY:


KYLE S. KARINEN, WSBA #34910
DEPARTMENT OF HEALTH STAFF ATTORNEY

MARCH 7, 2017
DATE

APPENDIX 3

Half Dental WA, Inc. Matter



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: Implants Dentures & Dental,
Inc., dba Half Dental, Inc.,
Richard Blanchard,
Half Dental WA, Inc.,
Brandon D'Haenens, and
John Doe
Master Case No.: M2014-442
Document: Notice of Intent

Regarding your request for information about the above-named practitioner; attached is a true and correct copy of the document on file with the State of Washington, Department of Health, Adjudicative Clerk Office. These records are considered Certified by the Department of Health.

Certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld: **NONE**

If you have any questions or need additional information regarding the information that was withheld, please contact:

Customer Service Center
P.O. Box 47865
Olympia, WA 98504-7865
Phone: (360) 236-4700
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to the Privacy Officer, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
SECRETARY OF HEALTH

FILED

JUN 27 2014

Adjudicative Clerk Office

In the Matter of

No. M2014-442

**IMPLANTS DENTURES & DENTAL,
INC., dba HALF DENTAL, INC.,
RICHARD BLANCHARD,
HALF DENTAL WA, INC.,
BRANDON D'HAENENS, and
JOHN DOE**

**NOTICE OF INTENT TO ISSUE CEASE
AND DESIST ORDER**

Respondent

David Magby, Director of the Unlicensed Practice Program (Program), on designation by the Secretary of Health, makes the allegations below, which are supported by evidence contained in program case file no. 2013-731.

1. FACTUAL ALLEGATIONS

1.1 Respondent Implants Dentures & Dental, Inc., (Half Dental) is a Nevada corporation that also does business as Half Dental, Inc.

1.2 Respondent Richard Blanchard is the president of Implants Dentures & Dental, Inc.

1.3 Respondent Half Dental WA, Inc., is a Washington corporation. Half Dental WA holds a state of Washington Department of Revenue business license for a dental office in Vancouver, WA. Additionally, Half Dental WA's corporate filings with the state of Washington Secretary of State indicate its place of business is the same location in Vancouver, WA where Dr. Avery Harrison (DENT.DE.00004619) practices dentistry.

1.4 Respondent Brandon D'Haenens holds all corporate officer positions for Half Dental WA, Inc.

1.5 Respondent John Doe, acting on behalf of Half Dental executed the contract referenced below in Paragraphs 1.7 and 1.8.

1.6 Respondents do not currently hold credentials to practice as a dentist in the state of Washington, and have never held such a credential.

1.7 On or about June 11, 2013, Respondent Half Dental and Dr. Harrison (DENT.DE.00004619) entered into a contract entitled "Management Services

ORIGINAL

Agreement" (Agreement). The Agreement governs the operation of the dental office in Vancouver, WA. A copy of the Agreement is attached hereto as Exhibit A.

1.8 The agreement provides for Half Dental to provide certain "management and related administrative services" to Dr. Harrison. The following terms are included in the Agreement:

- A. Half Dental maintains and supervises custody of all business records. (Section 3(a))
- B. Half Dental performs all billing and collection and retains "sole discretion" over attempts at collection, the methods of collection and settlement over disputed charges. (Section 3(b))
- C. Half Dental selects all "non-Dental Personnel" and controls the terms of their employment, including "rates of compensation, supervision, direction, training and assignment of duties." (Section 3(c))
- D. Half Dental maintains the liability and property insurance for the dental office. (Section 3(f))
- E. Half Dental establishes and maintains bank accounts for Dr. Harrison for the purposes of paying his practice's costs incurred by Half Dental and "all other costs, expenses and disbursements incurred" pursuant to the operation of the Agreement. (Section 3(i))
- F. Half Dental retains the right to manage and direct "the initiation and prosecution of all claims, actions, proceedings or investigations brought by [Dr. Harrison] against any person other than [Half Dental]." (Section 3(o))
- G. Half Dental prohibits Dr. Harrison from establishing another clinic location within 100 miles of his clinic location. (Section 4(c))
- H. Dr. Harrison assigns all of his right and interest in all revenues generated from his practice to Half Dental. (Section 5)
- I. Half Dental is not compensated with a fixed fee for service by Dr. Harrison. Instead, Half Dental is compensated using a formula that reimburses it for its costs plus "an amount equal to the lesser of Net Pre-tax Income or 30% of Net Revenues." This formula allows Half Dental a substantial beneficial interest in the practice's profits. (Section 5)

J. Half Dental retains a "proprietary" interest in the patient information. Dr. Harrison specifically disclaims any intellectual property interest in the information related to his own patients. (Section 11)

1.9 The location where Dr. Harrison operates his practice is leased by Half Dental from a third party along with the clinically-related equipment.

2. ALLEGED VIOLATIONS

2.1 Respondents' conduct described in Section 1 establishes an ownership interest in the Vancouver dental office and the terms in the Agreement require the Respondents to operate that dental office. This constitutes the unlicensed practice of dentistry in violation of RCW 18.32.020 (3) and RCW 18.32.091.

RCW 18.32.020 Practice of dentistry defined.

A person practices dentistry, within the meaning of this chapter, who

...

(3) owns, maintains, or operates an office for the practice of dentistry[.]

...

RCW 18.32.091 License required.

No person, unless previously licensed to practice dentistry in this state, shall begin the practice of dentistry without first applying to, and obtaining a license.

...

2.2 The violation described in Paragraph 2.1 constitutes grounds for issuance of a cease and desist order pursuant to RCW 18.130.190.

RCW 18.130.190 Practice without license — Investigation of complaints — Cease and desist orders — Injunctions — Penalties.

(1) The secretary shall investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. In the investigation of the complaints, the secretary shall have the same authority as provided the secretary under RCW 18.130.050.

(2) The secretary may issue a notice of intention to issue a cease and desist order to any person whom the secretary has reason to believe is engaged in the unlicensed practice of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. The person to whom such notice is issued may request an adjudicative proceeding to contest the charges. The request for hearing must be filed within twenty days after service of the notice of intention to issue a cease

and desist order. The failure to request a hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine. All proceedings shall be conducted in accordance with chapter 34.05 RCW.

(3) If the secretary makes a final determination that a person has engaged or is engaging in unlicensed practice, the secretary may issue a cease and desist order. In addition, the secretary may impose a civil fine in an amount not exceeding one thousand dollars for each day upon which the person engaged in unlicensed practice of a business or profession for which a license is required by one or more of the chapters specified in RCW 18.130.040. The proceeds of such fines shall be deposited to the health professions account.

(4) If the secretary makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the secretary may issue a temporary cease and desist order. The person receiving a temporary cease and desist order shall be provided an opportunity for a prompt hearing. The temporary cease and desist order shall remain in effect until further order of the secretary. The failure to request a prompt or regularly scheduled hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine.

(5) Neither the issuance of a cease and desist order nor payment of a civil fine shall relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy of a cease and desist order or civil fine shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed practice and may be enforced under RCW 7.21.060. This method of enforcement of the cease and desist order or civil fine may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders set out in chapter 34.05 RCW.

(6) The attorney general, a county prosecuting attorney, the secretary, a board, or any person may in accordance with the laws of this state governing injunctions, maintain an action in the name of this state to enjoin any person practicing a profession or business for which a license is required by the chapters specified in RCW 18.130.040 without a license from engaging in such practice or operating such business until the required license is secured. However, the injunction shall not relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy by injunction shall be in addition to any criminal liability.

(7)(a) Unlicensed practice of a profession or operating a business for which a license is required by the chapters specified in RCW 18.130.040,

unless otherwise exempted by law, constitutes a gross misdemeanor for a single violation.

(b) Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a class C felony punishable according to chapter 9A.20 RCW.

(8) All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be remitted to the health professions account.

2.3 Pursuant to RCW 18.130.190, after due and proper notice, the Secretary of Health is authorized to issue a cease and desist order against a person upon a determination that such person has engaged in or is engaging in unlicensed practice of dentistry and may impose a fine of up to one thousand dollars (\$1,000.00) for each day of unlicensed practice.

3. NOTICE TO RESPONDENT


David Magby, Unlicensed Practice Director, alleges that the conduct referenced herein affects the public health, safety, and welfare; that a notice should be issued and served as provided by law to Respondent giving Respondent the opportunity to respond to the charges from the Department of Health against Respondent for unlicensed practice; and that if Respondent fails to defend against these matters, a permanent Cease and Desist Order may be issued and a civil fine imposed without further notice or opportunity for a hearing.

DATED: June 25, 2014

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
SECRETARY OF HEALTH



DAVID MAGBY
UNLICENSED PRACTICE DIRECTOR



HEATHER A. CARTER, WSBA #30477
ASSISTANT ATTORNEY GENERAL PROSECUTOR

EXHIBIT A

June 11, 2013, Half Dental and Dr. Avery Harrison "Management Services Agreement"
See attached



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: Implants Dentures & Dental,
Inc., dba Half Dental Inc.,
Brandon D'Haenens, and
Jason McKew
Master Case No.: M2014-442
Document: Agreed Order

Regarding your request for information about the above-named practitioner; attached is a true and correct copy of the document on file with the State of Washington, Department of Health, Adjudicative Clerk Office. These records are considered Certified by the Department of Health.

Certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld: **NONE**

If you have any questions or need additional information regarding the information that was withheld, please contact:

Customer Service Center
P.O. Box 47865
Olympia, WA 98504-7865
Phone: (360) 236-4700
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to the Privacy Officer, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
SECRETARY OF HEALTH

In the Matter of

No. M2014-442

**IMPLANTS DENTURES & DENTAL,
INC., dba HALF DENTAL, INC.,
HALF DENTAL WA, INC.,
BRANDON D'HAENENS, and
JASON MCKEW**

**STIPULATED FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
AGREED ORDER TO CEASE AND
DESIST**

Respondents

The Unlicensed Practice Program (Program), by and through Kyle Karinen, Department of Health Staff Attorney, and, Respondents, represented by counsel, Stephen Leatham, stipulate and agree to the following:

1. PROCEDURAL STIPULATIONS

1.1 On June 25, 2014, the Program served on Respondents a Notice of Intent to Issue Cease and Desist Order (Notice), which alleges that Respondents violated RCW 18.32.091 by engaging in conduct constituting the unlicensed practice of dentistry.

1.2 Respondents understand that the State is prepared to proceed to a hearing on the allegations in the Notice.

1.3 Respondents understand that if the allegations are proven at a hearing, the Secretary of Health has the power and authority to issue a permanent Cease and Desist Order and impose a fine under RCW 18.130.190.

1.4 Respondents have the right to defend against the allegations in the Notice by presenting evidence at a hearing.

1.5 Respondents waive the opportunity for a hearing on the Notice provided that the Secretary of Health accepts this Stipulated Findings of Fact, Conclusions of Law, and Agreed Order to Cease and Desist (Agreed Order).

1.6 The parties agree to resolve this matter by means of this Agreed Order.

1.7 Respondents understand that this Agreed Order is not binding unless and until it is signed by the Health Law Judge and served by the Adjudicative Clerk Office.

1.8 The Agreed Order is a public document and is subject to public disclosure.

1.9 If the Secretary of Health rejects this Agreed Order, Respondents waive any objection to the participation at hearing of the Presiding Officer who heard the Agreed Order presentation.

2. FINDINGS OF FACT

Respondents and the Program stipulate to the following facts:

2.1 Respondent Implants Dentures & Dental, Inc. (Half Dental) is a Nevada corporation that also does business as Half Dental, Inc.

2.2 Respondent Half Dental WA, Inc. is a Washington corporation. Half Dental WA holds a state of Washington Department of Revenue business license for a dental office in Vancouver, WA. Additionally, Half Dental WA's corporate filings with the state of Washington Secretary of State indicate its place of business is the same location in Vancouver, WA where Dr. Avery Harrison (DENT.DE.00004619) practices dentistry.

2.3 Respondent Brandon D'Haenens holds all corporate officer positions for Half Dental WA, Inc.

2.4 Respondent Jason McKew, acting on behalf of Half Dental, executed the contract referenced below in Paragraphs 2.6 and 2.7.

2.5 Respondents do not currently hold credentials to practice as a dentist in the state of Washington, and have never held such a credential.

2.6 On or about June 11, 2013, Respondent Half Dental and Dr. Harrison (DENT.DE.00004619) entered into a contract entitled, "Management Services Agreement" (Agreement). The Agreement governs the operation of the dental office in Vancouver, WA. A copy of the Agreement is attached hereto as Exhibit A.

2.7 The Agreement provides for Half Dental to provide certain "management and related administrative services" to Dr. Harrison. The following terms are included in the Agreement:

A. Half Dental maintains and supervises custody of all business records. (Section 3(a))

B. Half Dental performs all billing and collection and retains "sole discretion" over attempts at collection, the methods of collection and settlement over disputed charges. (Section 3(b))

C. Half Dental selects all "non-Dental Personnel" and controls the terms of their employment, including "rates of compensation, supervision, direction, training and assignment of duties." (Section 3(c))

D. Half Dental maintains the liability and property insurance for the dental office. (Section 3(f))

E. Half Dental establishes and maintains bank accounts for Dr. Harrison for the purposes of paying his practice's costs incurred by Half Dental and "all other costs, expenses and disbursements incurred" pursuant to the operation of the Agreement. (Section 3(i))

F. Half Dental retains the right to manage and direct "the initiation and prosecution of all claims, actions, proceedings or investigations brought by [Dr. Harrison] against any person other than [Half Dental]." (Section 3(o))

G. Half Dental prohibits Dr. Harrison from establishing another clinic location within one hundred (100) miles of his clinic location. (Section 4(c))

H. Dr. Harrison assigns all of his right and interest in all revenues generated from his practice to Half Dental. (Section 5)

I. Half Dental is not compensated with a fixed fee for service by Dr. Harrison. Instead, Half Dental is compensated using a formula that reimburses it for its costs plus "an amount equal to the lesser of Net Pre-tax Income or 30% of Net Revenues." This formula allows Half Dental a substantial beneficial interest in the practice's profits. (Section 5)

J. Half Dental retains a "proprietary" interest in the patient information. Dr. Harrison specifically disclaims any intellectual property interest in the information related to his own patients. (Section 11)

2.8 The location where Dr. Harrison operates his practice is leased by Half Dental from a third party along with the clinically-related equipment.

2.9 During the period from at least June 11, 2013 through November 2014, Half Dental accepted prepayment from patients who were either treated at the dental office in Vancouver, WA or were scheduled to be treated at the Vancouver, WA office.

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3. CONCLUSIONS OF LAW

Respondents and the Program agree to entry of the following Conclusions of Law:

3.1 The Secretary of Health, acting through the Presiding Officer, has jurisdiction over Respondents and over the subject matter of this proceeding.

3.2 Respondents have, respectively, engaged in the unlicensed practice of dentistry in violation of RCW 18.32.091.

3.3 The above violations provide grounds for the issuance of a permanent Cease and Desist Order under RCW 18.130.190.

4. AGREED ORDER

Based on the Findings of Fact and Conclusions of Law, Respondents agree to entry of the following Agreed Order:

4.1 Respondents shall permanently **CEASE AND DESIST** from engaging in any and all conduct constituting the practice of dentistry in the state of Washington, unless Respondents have first obtained the requisite health care credential or otherwise meet an exception. As part of their cessation, Respondents agree to directly refund all monies prepaid by patients to them within ninety (90) days of the effective date of this Agreed Order.

4.2 Respondents shall pay a civil fine in the amount of fourteen thousand dollars (\$14,000.00), which shall be paid by certified or cashier's check or money order, made payable to the Department of Health, and mailed to the Department of Health, Unlicensed Practice Program, P.O. Box 1099, Olympia, WA 98507-1099.

4.3 The Program agrees to stay collection of the fine imposed under Paragraph 4.2, based on Respondents' compliance with the terms and conditions of this Agreed Order.

4.4 The effective date of this Agreed Order is the date the Adjudicative Clerk Office places the signed Agreed Order into the U.S. mail. If required, Respondents shall not submit any fees or compliance documents until after the effective date of this Agreed Order.

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5. ACCEPTANCE

IMPLANTS DENTURES & DENTAL, INC., dba HALF DENTAL, INC., HALF DENTAL WA, INC., BRANDON D'HAENENS, and JASON MCKEW, Respondents, have read, understand and agree to this Agreed Order, respectively. This Agreed Order may be presented to the Secretary of Health without an appearance by any of the Respondents. Respondents understand that they will each receive a signed copy if the Secretary of Health accepts this Agreed Order.


IMPLANTS DENTURES & DENTAL, a Nevada corporation dba HALF DENTAL, INC.


By: _____
Its: _____
DATE _____



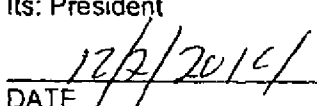
BRANDON D'HAENENS
DATE 12/2/2014


HALF DENTAL WA, INC., a Washington corporation


By: Brandon D'Haenens
Its: President
DATE 12/2/2014



JASON MCKEW
DATE 12/2/2014


By: _____
Its: _____
DATE 12/9/14



STEPHEN G. LEATHAM
WSBA #15572
ATTORNEY FOR RESPONDENTS
DATE 12/9/14

5. ACCEPTANCE

IMPLANTS DENTURES & DENTAL, INC., dba HALF DENTAL, INC., HALF DENTAL WA, INC., BRANDON D'HAENENS, and JASON MCKEW, Respondents, have read, understand and agree to this Agreed Order, respectively. This Agreed Order may be presented to the Secretary of Health without an appearance by any of the Respondents. Respondents understand that they will each receive a signed copy if the Secretary of Health accepts this Agreed Order.

IMPLANTS DENTURES & DENTAL, a Nevada corporation dba HALF DENTAL, INC.


By: Richard BLANCHARD D.D.S.
Its:


12/7/2014
DATE



BRANDON D'HAENENS

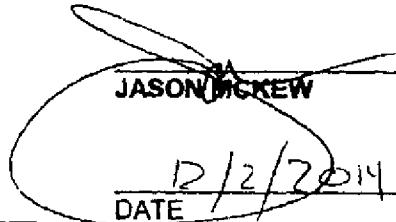
12/2/2014
DATE

HALF DENTAL WA, INC., a Washington corporation



By: Brandon D'Haenens
Its: President

12/2/2014
DATE



JASON MCKEW

12/2/2014
DATE

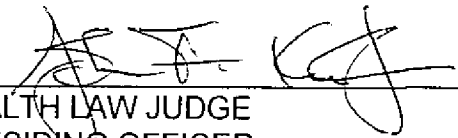
STEPHEN G. LEATHAM
WSBA #15572
ATTORNEY FOR RESPONDENTS

DATE

6. ORDER

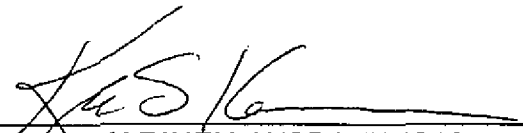
The Secretary of Health accepts this Stipulated Findings of Fact, Conclusions of Law, and Agreed Order to Cease and Desist. It is ordered that all parties shall be bound by the terms and conditions of Section 4.

DATED: December 22, 2014



HEALTH LAW JUDGE
PRESIDING OFFICER

PRESENTED BY:



KYLE S. KARINEN, WSBA #34910
DEPARTMENT OF HEALTH STAFF ATTORNEY

12/16/2014
DATE

APPENDIX 4

Avery Elmer Harrison Matter



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: Avery Elmer Harrison
Master Case No.: M2015-115
Document: Agreed Order

Regarding your request for information about the above-named practitioner; attached is a true and correct copy of the document on file with the State of Washington, Department of Health, Adjudicative Clerk Office. These records are considered Certified by the Department of Health.

Certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld: **NONE**

If you have any questions or need additional information regarding the information that was withheld, please contact:

Customer Service Center
P.O. Box 47865
Olympia, WA 98504-7865
Phone: (360) 236-4700
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to the Privacy Officer, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
DENTAL QUALITY ASSURANCE COMMISSION

In the Matter of

AVERY ELMER HARRISON
Credential No. DENT.DE.00004619

Respondent

No. M2015-115

**STIPULATED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
AGREED ORDER**

The Dental Quality Assurance Commission (Commission), through Alexander H. Lee, Department of Health Staff Attorney, and Respondent, represented by counsel, if any, stipulate and agree to the following:

1. PROCEDURAL STIPULATIONS

1.1 On April 30, 2015, the Commission issued a Statement of Charges against Respondent.

1.2 Respondent understands that the Commission is prepared to proceed to a hearing on the allegations in the Statement of Charges.

1.3 Respondent understands that if the allegations are proven at a hearing, the Commission has the authority to impose sanctions pursuant to RCW 18.130.160.

1.4 Respondent has the right to defend against the allegations in the Statement of Charges by presenting evidence at a hearing.

1.5 Respondent waives the opportunity for a hearing on the Statement of Charges provided that the Commission accepts this Stipulated Findings of Fact, Conclusions of Law and Agreed Order (Agreed Order).

1.6 The parties agree to resolve this matter by means of this Agreed Order.

1.7 Respondent understands that this Agreed Order is not binding unless and until it is signed by the Commission and served by the Adjudicative Clerk Office.

1.8 If the Commission accepts this Agreed Order, it will be reported to the National Practitioner Databank (45 CFR Part 60) and elsewhere as required by law. It is a public document and will be placed on the Department of Health's website and otherwise disseminated as required by the Public Records Act (Chap. 42.56 RCW) and the Uniform Disciplinary Act. RCW 18.130.110.

1.9 If the Commission rejects this Agreed Order, Respondent waives any objection to the participation at hearing of any Commission members who heard the Agreed Order presentation.

2. FINDINGS OF FACT

Respondent and the Commission stipulate to the following facts:

2.1 On July 1, 1975, the State of Washington issued Respondent a credential to practice as a dentist. Respondent's credential is currently active.

2.2 In or about June, 2013, Respondent entered into an employment contract with Implants Dentures & Dental, Inc., Half Dental WA, Inc., a Nevada-based corporation (Half Dental, Inc.). This contract described Respondent's performance of dentistry in relation to his employer, Half Dental, Inc.

2.3 On or about December 2, 2014, Half Dental, Inc., by and through the corporation's officers signed a "Stipulated Findings of Fact, Conclusions of Law, and Agreed Order to Cease and Desist" (Cease and Desist Order) based on the corporation's unlicensed practice of dentistry in violation of RCW 18.32.091.

2.4 The Cease and Desist Order contained certain findings of fact relating to Respondent as follows:

- A. On or about June 11, 2013, Respondent Half Dental and Dr. Harrison (DENT.DE.00004619) entered into a contract entitled, "Management Services Agreement" (Agreement). The Agreement governs the operation of the dental office in Vancouver, WA. A copy of the Agreement is attached hereto as Exhibit A.
- B. The Agreement provides for Half Dental to provide certain "management and related administrative services" to Dr. Harrison. The following terms are included in the Agreement:
 - a. Half Dental maintains and supervises custody of all business records. (Section 3(a))
 - b. Half Dental performs all billing and collection and retains "sole discretion" over attempts at collection, the methods of collection and settlement over disputed charges. (Section 3(b))

- c. Half Dental selects all "non-Dental Personnel" and controls the terms of their employment, including "rates of compensation, supervision, direction, training and assignment of duties." (Section 3(c))
- d. Half Dental maintains the liability and property insurance for the dental office. (Section 3(f))
- e. Half Dental establishes and maintains bank accounts for Dr. Harrison for the purposes of paying his practice's costs incurred by Half Dental and "all other costs, expenses and disbursements incurred" pursuant to the operation of the Agreement. (Section 3(i))
- f. Half Dental retains the right to manage and direct "the initiation and prosecution of all claims, actions, proceedings or investigations brought by [Dr. Harrison] against any person other than [Half Dental]." (Section 3(o))
- g. Half Dental prohibits Dr. Harrison from establishing another clinic location within one hundred (100) miles of his clinic location. (Section 4(c))
- h. Dr. Harrison assigns all of his right and interest in all revenues generated from his practice to Half Dental. (Section 5)
- i. Half Dental is not compensated with a fixed fee for service by Dr. Harrison. Instead, Half Dental is compensated using a formula that reimburses it for its costs plus "an amount equal to the lesser of Net Pre-tax Income or 30% of Net Revenues." This formula allows Half Dental a substantial beneficial interest in the practice's profits. (Section 5)
- j. Half Dental retains a "proprietary" interest in the patient information. Dr. Harrison specifically disclaims any intellectual property interest in the information related to his own patients. (Section 11)

- C. The location where Dr. Harrison operates his practice is leased by Half Dental from a third party along with the clinically-related equipment.
- D. During the period from at least June 11, 2013 through November 2014, Half Dental accepted prepayment from patients who were either treated at the dental office in Vancouver, WA or were scheduled to be treated at the Vancouver, WA office.

2.5 Respondent's performance under the contract above enabled Half Dental Inc.'s unlicensed practice of dentistry at the Vancouver, WA office because Half Dental Inc. would not be able to operate but for Respondent's agreement to practice under the terms of the contract.

3. CONCLUSIONS OF LAW

The Commission and Respondent agree to the entry of the following Conclusions of Law:

3.1 The Commission has jurisdiction over Respondent and over the subject matter of this proceeding.

3.2 Respondent has committed unprofessional conduct in violation of RCW 18.130.180(10).

3.3 The above violation provides grounds for imposing sanctions under RCW 18.130.160.

4. COMPLIANCE WITH SANCTION RULES

4.1 The disciplining authority applies WAC 246-16-800, *et seq.*, to determine appropriate sanctions. WAC 246-16-800(2)(c) requires the disciplining authority to impose terms based on a specific sanction schedule unless "the schedule does not adequately address the facts in a case."

4.2 The sanction schedules stated in rule do not address the conduct in this case. RCW 18.130.390 and WAC 246-16-800(2)(d) require the disciplining authority to use its judgment to determine appropriate sanctions when the sanction schedules do not address the conduct in question. In this matter, the disciplining authority considered the corporation's agreement to "cease and desist" all unlicensed practice of dentistry, and

thereby determined that a reprimand and fine will appropriately address Respondent's professional misconduct because Respondent no longer practices with the corporation.

5. AGREED ORDER

Based on the Findings of Fact and Conclusions of Law, the Commission and Respondent agree to entry of the following Agreed Order:

5.1 Respondent is **REPRIMANDED** for aiding and abetting the unlicensed practice of dentistry.

5.2 Respondent shall pay a fine to the Commission in the amount of one thousand dollars (\$1,000.00), which must be received by the Commission within one (1) year of the effective date of this Agreed Order. The fine shall be paid by certified or cashier's check or money order, made payable to the Department of Health and mailed to the Department of Health, Dental Quality Assurance Commission, at PO Box 1099, Olympia, WA 98507-1099. Credit or Debit cards can also be used for payment at the front counter of the Department of Health building at 111 Israel Road SE, Tumwater, WA 98501, during regular business hours.

5.3 The Commission has determined the reasonable investigative and hearing preparation expenses so far in this case and is seeking a partial recovery of these expenses pursuant to RCW 18.32.775. Respondent shall reimburse expenses to the Commission in the amount of two thousand two hundred fifty dollars and twenty-two cents (\$2,250.22), which must be received by the Commission within one (1) year of the effective date of this Agreed Order. The reimbursement shall be paid by certified or cashier's check or money order, made payable to the Department of Health and mailed to the Department of Health, Dental Quality Assurance Commission at PO Box 1099, Olympia, WA 98507-1099. Credit or Debit cards can also be used for payment at the front counter of the Department of Health building at 111 Israel Road SE, Tumwater, WA 98501, during regular business hours.

5.4 Any documents required by this Agreed Order shall be sent to Department of Health Compliance at PO Box 47873, Olympia, WA 98504-7873.

5.5 Respondent is responsible for all costs of complying with this Agreed Order.

5.6 Respondent shall inform the Department of Health Office of Customer Service, in writing, of changes in Respondent's residential and/or business address within

thirty (30) days of the change. The mailing address for the Office of Customer Service is PO Box 47865, Olympia, WA 98504-7865.

5.7 Respondent shall obey all federal, state and local laws and all administrative rules governing the practice of the profession in Washington.

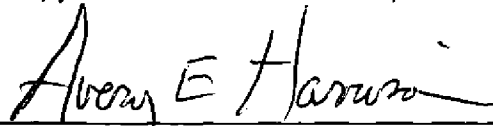
5.8 The effective date of this Agreed Order is the date the Adjudicative Clerk Office places the signed Agreed Order into the U.S. mail. If required, Respondent shall not submit any fees or compliance documents until after the effective date of this Agreed Order.

6. FAILURE TO COMPLY

Protection of the public requires practice under the terms and conditions imposed in this order. Failure to comply with the terms and conditions of this order may result in suspension of the credential after a show cause hearing. If Respondent fails to comply with the terms and conditions of this order, the Commission may hold a hearing to require Respondent to show cause why the credential should not be suspended. Alternatively, the Commission may bring additional charges of unprofessional conduct under RCW 18.130.180(9). In either case, Respondent will be afforded notice and an opportunity for a hearing on the issue of non-compliance.

7. ACCEPTANCE


I, AVERY ELMER HARRISON, have read, understand and agree to this Agreed Order. This Agreed Order may be presented to the Commission without my appearance. I understand that I will receive a signed copy if the Commission accepts this Agreed Order.



AVERY ELMER HARRISON
RESPONDENT

Sept 8th 2015

DATE



CHRISTOPHER KERLEY, WSBA #16489
ATTORNEY FOR RESPONDENT

9/14/15

DATE

8. ORDER

The Commission accepts and enters this Stipulated Findings of Fact, Conclusions of Law and Agreed Order.


DATED: 10/23, 2015

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
DENTAL QUALITY ASSURANCE
COMMISSION



PANEL CHAIR

PRESENTED BY:



ALEXANDER H. LEE, WSBA #35824
DEPARTMENT OF HEALTH STAFF ATTORNEY

10/23/15

DATE